IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9498 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TALOD KELAVANI MANDAL

Versus

B R PATEL

Appearance:

1. Special Civil Application No. 9498 of 1992

MR AJ PATEL for Petitioner No. 1

MR MUKUND M DESAI for Respondent No. 1

Ms MANISHA LAVKUMAR, AGP, for Respondent No. 2-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/12/2002

ORAL JUDGEMENT

What is challenged in this petition under Article 226 of the Constitution is the order passed by the

Gujarat Secondary Education Tribunal.

2. Respondent No.1 herein was employed as a craft teacher in the school run by the petitioner-institution. A departmental inquiry was instituted against respondent No.1-teacher by the school management. The charges mainly pertained to unauthorised absence of respondent No.1 - teacher (hereinafter referred to as `the teacher') from the school on a number of occasions including absence in the years 1986 and 1987. The Inquiry Officer submitted his report dated 27-2-1991 (Annexure D, Page 44) and gave a finding that charge nos.1 to 4 were proved beyond reasonable doubt. In view of the said inquiry report dated 27-2-1991, the management issued second show cause notice dated 6-3-1991 calling upon the teacher why the teacher should not be dismissed from service. Thereafter on 22-7-1991, the management submitted a proposal to the Director of Higher Education for approval of the proposal to dismiss the teacher from service. Thereafter on 29-7-1991, the teacher submitted his resignation letter to the management through the District Education Officer who recorded the presence of the teacher and recorded that the resignation was being tendered voluntarily. When the said resignation was sent to the Management, the management informed the DEO that inquiry was going on against the teacher for serious charges and hence no decision was taken on the resignation. Thereafter, the Director of Higher Education fixed the hearing of the proposal of the management on 5-9-1991. However, the teacher submitted another resignation letter dated 30-8-1991 to the school management through the DEO for resigning from the school w.e.f. 31-8-1991 and also agreeing to pay the three months notice pay on the ground that he had secured appointment in another school. On 19-8-1991, the school management informed the DEO that in view of the pendency of the inquiry against the teacher, no decision was taken on the resignation. When the hearing took place before the Director of Higher Education on 5-9-1991, the teacher contended that he had already tendered resignation from the school. However, the Director granted approval by his order dated 5-9-1991 to the proposal dated 22-7-1991 of the school management for dismissal of the teacher from service.

3. Aggrieved by the aforesaid approval letter dated 5-9-1991, the teacher filed Appeal No.10 of 1991 before the Secondary Education Tribunal. The teacher also prayed for a declaration that in view of his resignation letter dated 31-8-1991, the school was bound to give him discharge certificate. The Tribunal allowed the appeal

as well as the aforesaid application and held that there was no provision under the Secondary Education Act or Regulations requiring acceptance by the management of the resignation submitted by the teacher and that once the teacher submitted the resignation before the DEO on 30-8-1991, resigning from the school w.e.f. 31-8-1991 and the DEO found the same to be voluntary and forwarded it to the management, the relationship of master and servant between the school and the teacher came to an end and, therefore, the teacher was entitled to get the discharge certificate.

The management moved the Tribunal with application for review which also came to be dismissed. Hence this petition.

4. It is contended in the petition that since the inquiry was going on against the teacher, he had no right to submit any resignation and that in any case the resignation unless accepted by the management cannot come into effect, more particularly, when the inquiry was going on against the teacher and the Director of Higher Education had also granted approval on 5-9-1991.

5. It is true that the question whether the resignation submitted by the teacher during pendency of a departmental inquiry is required to be accepted by the management or not or whether it comes into effect merely upon its being tendered before the DEO as a voluntary resignation, is a question which would require serious consideration.

Sub-sections (4) and (5) of Section 36 are relevant in this behalf and read as under:-

"(4) Where a head master, a teacher or a member of the non-teaching staff of a registered private secondary school desires to submit his resignation, the resignation shall be tendered by him in person to the District Education Officer concerned and shall not be accepted by the manager unless it is so tendered and forwarded to him by such officer duly endorsed. The acceptance of any such resignation tendered in contravention of this sub-section shall be ineffective.

(5) Any person aggrieved by an order of the authorised officer under clause (b) of sub-section (1) may make an appeal to the Tribunal within a period of thirty days from

the date of the decision of the authorised officer."

6. Though the provisions do not expressly provide that the resignation cannot become effective without its being accepted by the management, the language employed by the Legislature does indicate that the mechanism of the resignation being required to be tendered before the DEO was merely in order to ensure that the resignation is voluntarily submitted by the teacher and not through any pressure employed by the management nor is any postdated resignation letter obtained by the management when the teacher is in service. There appears considerable substance in the submission made by the learned counsel for the petitioner-management. However, considering the fact that the charges levelled against the respondent-teacher in the year 1991 only pertained essentially to unauthorised absence or overstaying leave and that the period of 10 years has already rolled by after Tribunal rendered the decision in favour of the teacher and the teacher has already secured employment elsewhere, this Court is not inclined to interfere with the impugned orders of the Tribunal which are not to be treated as laying down the correct law.

Nevertheless it also appears to the Court that it would be just and proper to direct that in case any inquiry is held against the respondent-teacher in respect of the services rendered by him in a new school after his so-called resignation from the petitioner-school in the year 1991, it will be open to the authorities i.e. the new school management and the DEO to take into account the misconduct proved at the inquiry held against the petitioner in the year 1991 for which the Director of Higher Education had also considered the penalty of dismissal as appropriate penalty, when any school management and the DEO have any occasion to consider the adequacy, reasonableness or proportionality of the penalty which may be imposed on the respondent-teacher for any misconduct which may be committed by him after 1991.

7. However, it is again clarified that the impugned orders of the Tribunal shall not be treated as laying down the correct law in so far as they hold that an employee is entitled to resign from a school without the resignation being required to be accepted by the management.

8. Subject to the aforesaid observations and clarification, the petition is dismissed.

Rule is discharged with no order as to costs.

(M.S. Shah,J)
zgs/-